IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.311 OF 2006
WITH
CIVIL APPLICATION NO.398 OF 2006

Mr.Basling Urf Raj Bala Allam ..Appellant.

V/s.

Municipal Corpn. of Gr.Mumbai & Anr. ..Respondents.

Mr.Manoj Upadhya with Ajay Mishra for appellant.

Mrs. Geeta Joglekar for respondent No.1.

Mr.A.R.Patil, AGP for respondent No.2.

Mr.P.P.Surve for respondent No.3.

CORAM: A.M.KHANWILKAR,J
DATE : JUNE 23, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant documents on record. Admit. Counsel for the Respondents waive notice. As short question is involved, appeal is heard forthwith finally.

2. This appeal from order takes exception to the Judgment and order passed on 21st April, 2006 by the Trial Court in L.C.Suit No.720 of 2006. The order which is impugned in this appeal reads thus:

> "Mrs.Mr.Bhoir, advocate for BMC present. Advocates for both parties present. Advocate for plff filed application for extension of time to carry out the amendment. The plff had given undertaking to argue the motion today. today the advocate for plaintiff states that he is unable to argue the motion. I therefore, permit him to carry out

amendment within two weeks.

The interim order not to continue.

Adjd. to 3/5/2006.

Later on :-Advocate for Plff.filed application. Order is passed on it."

3. The case of the appellant is that soon after the impugned order was passed refusing to continue the interim order, the advocate for the appellant made an application in writing. That application was also rejected. In that application the advocate for the appellant undertook to argue the Notice of Motion on the same day. The court however, while rejecting that application has noted that the application was filed at 5 p.m. after the matter was already adjourned and order was passed. It is further noted that the matter will be heard at the adjourned date.

4. After having considered the rival submissions and going through the pleadings on record, I am of the opinion that for the mistake of the advocate the litigant should not suffer. The Advocate made an attempt to correct his mistake by expressing willingness to argue the Notice of Motion on the same day. Even then the trial Court refused to show indulgence to the appellant. Taking overall view of the matter in the interest of justice, I am inclined

to set aside the order refusing to continue interim order as passed.

5. The appeal is allowed and the interim order which was passed on the earlier occasion by the trial Court is directed to be continued till disposal of the Notice of Motion. It is further directed that the Notice of Motion will be heard expeditiously, preferably by end of 31st July, 2006. This direction is issued on the basis of assurance given by the parties through their counsel in this court that pleadings will be completed on or before 29th June, 2006. That assurance is accepted.

6. It is further ordered that the advocate for the appellant appearing before the trial Court shall pay costs quantified at Rs.750/- to High Court Legal Services Committee within one week from today, failing which the interim protection granted under this order shall stand vacated forthwith without reference to the court.

7. Appeal as well as civil application disposed of accordingly.